

No. 15719 /

United States
Court of Appeals
For the Ninth Circuit

WILLIAM P. ROGERS, as Attorney General of
the United States of America,

Appellant,

vs.

URHO PAAVO PATOKOSKI,

Appellee.

Transcript of Record

FILED

FEB 17 1959

PAUL P. O'BRIEN, CLERK

Appeal from the United States District Court
for the District of Oregon.



No. 15719

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Court of Appeals**
For the Ninth Circuit

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For Appellee.



In the District Court of the United States
for the District of Oregon

Civil Action No. 8189

URHO PAAVO PATOKOSKI,

Plaintiff,

vs.

HERBERT BROWNELL, JR., as Attorney Gen-
eral of the United States of America,

Defendant.

COMPLAINT UNDER SECTION 1503, UNITED
STATES NATIONALITY ACT OF 1952

Plaintiff, for cause of action against the defend-
ant, complains and alleges:

I.

This is an action under the provisions of Section 2201 of Title 28, as authorized by Section 1503 of Title 8 (Act of June 27, 1932, C. 477, Title III, ch. 3, Section 360, 66 Stat. 273), commonly known as the United States Nationality Act of 1952.

II.

The plaintiff was born on July 19, 1907, at Meri-
jarvi, Finland. The plaintiff's father was a natural-
ized citizen of the United States of America at the
time of the plaintiff's birth, and the plaintiff is
therefore a citizen of the United States of America.

III.

The plaintiff's permanent residence is within the
District of Oregon.

IV.

The defendant is the duly appointed and acting Attorney General of the United States of America, and as such is the head of the Department of Justice of the said United States of America, and of the Immigration and Naturalization Service, which is an agency of the said Department.

V.

The defendant, as the head of such Department and of such agency, is empowered to require the voluntary departure or deportation of aliens from the United States of America who are not lawfully within the said United States of America.

VI.

On or about April 20, 1949, the Commissioner of such agency entered an order in deportation proceedings against the plaintiff, and Toini Esteri Patokoski, the plaintiff's wife, and Timo Matti Juhani Patokoski, Pekka Jouko Kalevi Patokoski and Paavo Esa Antero Patokoski, the minor sons of the plaintiff, requiring them to depart voluntarily from the United States of America within three months from the date of notification of such order. On or about July 7, 1955, such agency delivered to the plaintiff and to his wife and to his minor sons, a notice of intention to recommend the entry of an alternate order to the effect that if they did not voluntarily depart from the United States of America on or before July 30, 1955, the order requiring their voluntary departure would be withdrawn with-

out further notice or proceedings, and they would be deported from the United States of America.

VII.

In such order made on or about April 20, 1949, the Commissioner admitted and acknowledged that the plaintiff was a citizen of the United States of America at the time of the plaintiff's birth, but such agency and such Department have heretofore insisted and are now insisting on the voluntary departure of the plaintiff, the plaintiff's wife and the plaintiff's minor sons, or in absence thereof, their deportation, on the sole ground that such agency and such Department were and now are of the opinion that the plaintiff has lost his United States of America citizenship.

VIII.

The plaintiff has not renounced his United States of America citizenship and has done nothing since his birth to expatriate himself or to justify such agency and such Department to require him to voluntarily depart from the United States of America, or in the absence thereof to deport him, solely on the ground that the plaintiff has lost his United States of America citizenship.

IX.

By reason of the plaintiff's United States of America citizenship, the plaintiff's wife and his minor sons are entitled to non-quota status as immigrants of the United States of America, and they should be permitted to petition for such without

voluntary departure from the United States of America, or deportation therefrom.

Wherefore, the plaintiff prays for a judgment declaring and adjudging that the plaintiff is a national and citizen of the United States of America, and that the plaintiff is entitled to all the rights and privileges of a national and citizen of the United States of America, and that the wife and minor sons of the plaintiff be permitted to petition for non-quota status as immigrants to the United States of America without voluntary departure or deportation therefrom.

/s/ WILLIAM A. MARTIN,
Attorney for Plaintiff.

Duly Verified.

[Endorsed]: Filed July 22, 1955.

[Title of District Court and Cause.]

ANSWER

Come now C. E. Luckey, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, by direction of defendant above named and for answer to the complaint on file herein admits, denies and alleges as follows:

1. Answering paragraph I thereof defendant admits that plaintiff has predicated his complaint on the statutes set forth in said paragraph, but

defendant denies that a cause of action exists thereunder and therefore denies the same and the whole thereof.

2. Answer paragraph II admits the plaintiff was born in Finland, the exact date being to this defendant unknown; admits that plaintiff's father was a naturalized citizen of the United States at the time of plaintiff's birth, but specifically denies that plaintiff is now a citizen of the United States.

3. Defendant has no knowledge as to the location of plaintiff's permanent residence and therefore puts plaintiff to proof thereon.

4. Admits the allegation of paragraph IV.

5. Admits the allegation of paragraph V.

6. Admits the allegation of paragraph VI.

7. Admits the allegations of paragraph VII.

8. Answering paragraph VIII defendant has no information as to whether or not plaintiff ever renounced his United States citizenship; as to the balance of said paragraph defendant denies each and every allegation and matter therein contained and the whole thereof.

9. Denies the allegations of paragraph IX.

For a further and separate answer and defense defendant alleges as follows:

10. That the order of the commissioner of April 20, 1949, directed to plaintiff and plaintiff's wife and four sons as more particularly set forth in para-

graph VI of plaintiff's complaint, requiring them to depart voluntarily from the United States of America within three months from the date of notification of such order, was a final administrative denial within the contemplation of Section 1503, Title 8, USC and the within action having been instituted by plaintiff more than five years after the entry of said final order, his right to proceed under Section 2201, Title 28, USC, is time barred.

For a second and further affirmative answer and defense, defendant alleges as follows:

11. That prior to the filing of the within complaint by plaintiff, plaintiff caused to be filed with the United States Department of Justice, Immigration and Naturalization Service, his "exception to recommendation for entry of alternative order providing for deportation and application for stay of proceedings" and also filed his "motion to reconsider motion to reopen hearing and adjust status for permanent residence," said motions having been lodged with the Portland Office of the Immigration and Naturalization Service, U. S. Department of Justice, on July 13, 1955; that there has been no administrative determination on the aforesaid motions and therefore defendant alleges that plaintiff's administrative remedies have not been exhausted and the within action therefore is premature and should be dismissed.

For a third further and affirmative answer and defense, defendant alleges as follows:

12. That plaintiff while residing in a foreign land

to wit, Finland, and after attaining the age of twenty-one years entered military service in the Finnish Army in connection with said service and took oaths of allegiance to the Finnish Government; that by virtue of the said oaths plaintiffs thereby divested himself of citizenship in the United States of America under the Act of March 2, 1907 (34 Stat. 1228), the provisions of Section 2 of which declared, in part, that any American citizen shall be deemed to have expatriated himself when he has taken an oath of allegiance to any foreign state.

Wherefore defendant having fully answered plaintiff's complaint herein, prays that the same be dismissed and held for nought and that defendant be awarded his costs and disbursements herein.

C. E. LUCKEY,
United States Attorney;

/s/ VICTOR E. HARR,
Assistant United States At-
torney.

Affidavit of Mail attached.

[Endorsed]: Filed September 16, 1955.

[Title of District Court and Cause.]

REPLY

Plaintiff, for his reply to the answer of the defendant on file herein, admits, denies and alleges as follows:

I.

Replying to the further and separate answer and defense therein, alleges that the plaintiff has no information or knowledge sufficient to form a belief as to the truth of the allegations in said answer and defense and therefore denies the same and the whole thereof.

II.

Replying to the second and further affirmative answer and defense therein, admits that prior to the filing of his complaint herein, the plaintiff caused to be filed with the United States Department of Justice, Immigration and Naturalization Service, an exception to the recommendation for entry of alternative order providing for deportation and application for stay of proceedings, and a motion to reconsider motion to reopen hearing and adjust status for permanent residence, and that said motions were lodged with the Portland Office of the Immigration and Naturalization Service, United States Department of Justice, on or about July 13, 1955, and denies each and every other allegation, matter and thing therein contained.

III.

Replying to the third further and affirmative answer and defense therein, admits that the plaintiff, while residing in a foreign land, to wit: Finland, and after attaining the age of twenty-one years entered military service in the Finnish Army and in connection with said service took an oath of

allegiance to the Finnish government, and denies each and every other allegation, matter and thing therein contained.

And, for a further and separate reply, the plaintiff alleges:

I.

As much of the act of March 2, 1907, (34 Stat. 1228) as provides that an American Citizen shall be deemed to have expatriated himself when he has taken an oath of allegiance to any foreign state is unconstitutional and void in that it is in conflict with the Constitution of the United States of America and the statutes promulgated thereunder unless such oath of allegiance is taken as the result of a voluntary procedure on the part of such citizen.

And, for a second further and separate reply, the plaintiff alleges:

I.

The service by the plaintiff in the Finnish Army and the oath of allegiance to the Finnish government taken by the plaintiff in connection therewith were involuntary on the part of the plaintiff and were undertaken under such circumstances as to constitute compulsion, legal duress, force and fraud upon the plaintiff, and by reason thereof, the plaintiff should not be deemed to have expatriated himself as a citizen of the United States of America.

Wherefore, having fully replied to the defendant's answer on file herein, the plaintiff prays for

judgment as prayed for in his complaint on file herein.

DAVIS, JENSEN, MARTIN &
ROBERTSON,

By /s/ WILLIAM A. MARTIN,
Attorneys for Plaintiff.

[Endorsed]: Filed February 1, 1956.

[Title of District Court and Cause.]

MOTION FOR LEAVE TO FILE
SUPPLEMENTAL COMPLAINT

Plaintiff moves the court for leave to file a supplemental complaint, a copy of which is attached hereto as Exhibit A, on the ground that the transactions, occurrences and events stated therein have happened since the date of the plaintiff's original complaint and that it is in the interest of justice that all issues between plaintiff and defendant be litigated in this action.

DAVIS, JENSEN, MARTIN &
ROBERTSON,

By /s/ WILLIAM A. MARTIN,
Attorneys for Plaintiff.

EXHIBIT A

In the United States District Court
for the District of Oregon

Civil No. 8189

URHO PAAVO PATOKOSKI,

Plaintiff,

vs.

HERBERT BROWNELL, JR., as Attorney Gen-
eral of the United States of America,

Defendant.

SUPPLEMENTAL COMPLAINT

Plaintiff, for a supplemental complaint herein,
complains and alleges:

I.

On or about the 22nd day of July, 1955, the plaintiff caused to be filed herein his Complaint under Section 1503, United States Nationality Act of 1952, and at the said time also caused to be filed a Motion for a Temporary Restraining Order and Preliminary Injunction. The said Motion thereafter came on for hearing, and prior to a decision therein it was stipulated in open court between the parties hereto, by and through their respective attorneys of record herein, that any proceedings to deport the plaintiff, or any members of his family, would be

held in abeyance pending the decision of the issues in this cause.

II.

Notwithstanding the said stipulation, the United States Department of Justice, acting by and through its Board of Immigration appeals, by order dated December 30, 1955, ordered the plaintiff and the members of his family to voluntarily depart from the United States within a period of thirty (30) days from the date of their receipt of the said order, and further ordered that upon the failure of the plaintiff and the members of his family to so depart within the said period of time a warrant for their deportation be issued and executed.

III.

The Department of Justice, by and through the Immigration and Naturalization Service will enforce the said order unless effect is given to the said stipulation hereinbefore mentioned. In the event the said stipulation is not held effective, then the plaintiff desires to have a hearing on the said Motion for a Temporary Restraining Order and Preliminary Injunction.

Wherefore, the plaintiff prays that the Department of Justice, by and through the Immigration and Naturalization Service be enjoined from enforcing the departure or deportation of the plaintiff and the members of his family from the United States until the above-entitled cause has been finally

determined, and for judgment as prayed for in his complaint on file herein.

DAVIS, JENSEN, MARTIN &
ROBERTSON,

By /s/ WILLIAM A. MARTIN,
Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed February 1, 1956.

[Title of District Court and Cause.]

ORDER

This cause came on to be heard on plaintiff's motion for leave to file a supplemental complaint herein, and the court being fully advised,

It Is Ordered (1) That plaintiff be given leave to file his supplemental complaint;

(2) That defendant answer or move with respect to the supplemental complaint on July 9, 1956.

Dated: Feb. 1st, 1956.

/s/ WILLIAM G. EAST,
Judge.

[Endorsed]: Filed February 1, 1956.

[Title of District Court and Cause.]

ANSWER TO SUPPLEMENTAL COMPLAINT

Comes now C. E. Luckey, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, by direction of the defendant above named, and for answer to plaintiff's supplemental complaint on file herein, admits, denies and alleges as follows:

1. Admits the allegations of Paragraph I.
2. For answer to Paragraph II, defendant admits that pursuant to stipulation of the parties, the United States Department of Justice, acting by and through its Board of Immigration Appeals, considered plaintiff's "Motion to Reconsider Motion to Reopen Hearing and Adjust Status for Permanent Residence" referred to in defendant's second and further affirmative answer and defense heretofore filed in this cause; that having considered said motion and supporting brief filed by plaintiff, the said Board of Immigration Appeals, on November 3, 1955, denied said motion and subsequently made an order dated December 30, 1955, wherein plaintiff and members of his family were ordered to voluntarily depart from the United States within a period of 30 days from the date of their receipt of the said order; that upon the failure of plaintiff and members of his family to so depart within the said period, it was further ordered that a Warrant

of Deportation would issue; but denies the remaining allegations in said paragraph.

3. For answer to Paragraph III, defendant asserts that it will abide by its stipulation heretofore expressed in open court, to the effect that no affirmative action will be taken to deport plaintiff or members of his family pending a full determination of the issues before this court in the within cause.

Wherefore, defendant having answered plaintiff's supplemental complaint herein, prays that the same be dismissed and held for nought and that defendant be awarded its costs and disbursements herein incurred.

C. E. LUCKEY,
United States Attorney,
District of Oregon;

/s/ VICTOR E. HARR,
Assistant United States Attorney, of Attorneys for
Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed July 6, 1956.

[Title of District Court and Cause.]

Civil No. 8189

INTERROGATORIES TO BE PROPOUNDED
TO PLAINTIFF

To: Urho Paavo Patokoski, Plaintiff, and to Davis, Jensen, Martin & Robertson, Attorneys of Record for Plaintiff:

Please Take Notice that defendant above named requires the plaintiff, Urho Paavo Patokoski, on oath and in writing, to answer the following interrogatories within 15 days from the date of service hereof, pursuant to the provisions of Rule 33 of the Federal Rules of Civil Procedure:

1. State the date or dates when you became a member of the Finnish Army and the date or dates when you were discharged from the Finnish Army.
2. State your rank upon entering the military service in the Finnish Army and rank when you obtained your discharge.
3. State whether or not you enlisted in the military service of the Finnish Army or whether said military service was by conscription.
4. If, during the period of service in the Finnish Army, you were promoted to a higher rank, state whether or not you made a voluntary application to obtain said higher rank.
5. Did you attend any military schools or obtain special training to obtain a higher rank, if any?

6. If you were conscripted into the Finnish Army, state whether or not you made any objection thereto.

7. If the answer to the next preceding question is that you did make objection, state in detail what objection was made and the manner and mode of said objection and whether it was written or oral.

8. If a written objection was made, furnish defendant with a true copy of said objection.

9. Was objection to service in the Finnish Army, if any, made at any time upon the grounds that you were a citizen of the United States?

10. State in detail the basis for your contention that your military service in the Finnish Army was involuntary.

11. State in detail how your military service with the Finnish Army was undertaken under circumstances as to constitute compulsion, legal duress, force and fraud upon you.

12. State as nearly as you can recall, the date on which you first contended to be a citizen of the United States.

13. At the time of taking the oath of allegiance to the Finnish Government, did you take said oath sincerely and honestly?

14. Did you at any time prior to your attaining the age of 21 years, feel that you did not owe your allegiance to the Finnish Government?

15. If your answer to the next preceding question is "Yes," state when you arrived at that decision and state in detail the reasons therefor.

C. E. LUCKEY,
United States Attorney,
District of Oregon;

/s/ VICTOR E. HARR,
Assistant United States Attorney, of Attorneys for
Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed July 9, 1956.

[Title of District Court and Cause.]

ANSWER TO INTERROGATORIES

Answer of Urho Paavo Patokoski, plaintiff to interrogatories served on him by Herbert Brownell, Jr., as Attorney General of the United States of America, defendant, on July 6, 1956:

Interrogatory No. 1. I first served in the Finnish Army during the period March, 1928, to May, 1929. My next service was from October, 1939, to July, 1940, and my last service was from June, 1941, to October, 1944.

Interrogatory No. 2. My rank upon entering military service in March, 1928, was private and upon being discharged in May, 1929, I was a ser-

geant. When I again entered service in October, 1939, I was a sergeant and I was discharged in July, 1940, as a 2nd Lieutenant. Upon being recalled to service in 1941 I was a 2nd lieutenant and when I was discharged in 1944 I was a 1st lieutenant.

Interrogatory No. 3. All of my service in the Finnish Army was rendered as a result of conscription into the service.

Interrogatory No. 4. I never made any voluntary application to obtain a higher rank in the Finnish Army. All promotions which I received were automatic, based upon the term of service.

Interrogatory No. 5. Yes, during the period from October, 1939, to July, 1940, I attended a reserve officers' training school under orders of the Finnish Military Command.

Interrogatory No. 6. I did not make any objection at the time of my conscription into the Finnish Army for the reason that it was useless to do so.

Interrogatory No. 7. Not applicable.

Interrogatory No. 8. Not applicable.

Interrogatory No. 9. I did not make any objection to service in the Finnish Army at any time upon the grounds that I was a citizen of the United States because I did not know that I was a citizen of the United States or that I had any rights as such.

Interrogatory No. 10. Finland had a law of uni-

versal military conscription for all males who attained the age of 18 years. When I reached the age of 18 years I was conscripted into the Finnish Army. At that time I did not know that I was a citizen of the United States. I was physically acceptable for service, and, since no other exemptions from service in the Finnish Army were recognized, I had to serve. During the period from October, 1939, to July, 1940, the famous, "Winter War," when Russia attacked Finland, was fought, and all males in Finland who had had military training were immediately conscripted for service. At that time I had no knowledge of my United States citizenship and knew of no basis on which to object to service. During the period from June, 1941, to October, 1944, the Second World War was being fought and again all males in Finland with military training were conscripted into service. I still had no knowledge of my status as a United States citizen and had no basis that I knew of on which to object to service. Refusal to serve would have resulted in a criminal prosecution and those who objected to service were sentenced to hard labor.

Interrogatory No. 11. The circumstances I have related in connection with Interrogatory No. 10 are such as to constitute compulsion, legal duress, force and fraud upon me in connection with the military service I was required to render with the Finnish Army.

Interrogatory No. 12. At one of the first conferences that I had with the representatives of the

Immigration and Naturalization authorities in Portland, Oregon, I was asked of what country I considered myself a citizen. I stated that I did not know of what country I was a citizen, but I had been under the belief that I was a citizen of Finland, since I was born there and had never had any indication to the contrary from my parents. At that time I produced a certificate of naturalization which indicated that my father, Matti Niemela, was a naturalized citizen of the United States, and I stated that I did not know what status this left me in as to United States citizenship. I had found this certificate in my mother's personal effects when she passed away in the fall of 1945, and I brought it with me to Portland, Oregon, when my family and I came here from Finland. I left this certificate with the Immigration and Naturalization Service and about two years later I received a communication from that service stating that I was a citizen of the United States by virtue of my father's citizenship, but that I had lost such citizenship and would have to go back to Finland with my family. From that time I have contended that I am a citizen of the United States.

Interrogatory No. 13. I have no recollection regarding my feeling when I took the oath of allegiance to the Finnish government at the times of my conscription into service in the Finnish army. The group of conscriptees was taken to a church, where the oath was administered to the entire group, then coffee and coffee cake were served after which

we left for service. As far as I was concerned, and I believe this was probably true of the entire group, this was a matter of formality or mechanics for processing us into service, more than anything else, for everyone had to take the oath of allegiance upon being conscripted. I would, therefore, say that in view of my lack of knowledge as to my rights as a citizen of the United States I took the oath of allegiance at the times of my conscription into the Finnish army as sincerely and honestly as anyone else that was so conscripted. If I had known of my status as a United States citizen I would have protested to taking such oath and I would have objected to service, and, if my protests and objections had been overruled, then I could say that any oath I would have been forced to take would not have been taken sincerely and honestly.

Interrogatory No. 14. I did not feel at any time prior to attaining the age of 21 years that I did not owe my allegiance to the Finnish government because I had no knowledge of my rights as a United States citizen and consequently did not know that my true allegiance was not to the Finnish government but to the United States.

Interrogatory No. 15. Not applicable.

/s/ URBO PAAVO PATOKOSKI.

Duly verified.

[Endorsed]: Filed July 18, 1956.

[Title of District Court and Cause.]

AMENDED ANSWER

Comes now C. E. Luckey, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, by direction of defendant above named and leave of Court having been first obtained, files this amended answer to the complaint herein and admits, denies and alleges as follows:

1. Answering Paragraph I thereof defendant admits that plaintiff has predicated his complaint on the statutes set forth in said Paragraph, but defendant denies that a cause of action exists thereunder and therefore denies the same and the whole thereof.

2. Answering Paragraph II thereof admits that plaintiff was born in Finland, the exact date being to this defendant unknown; admits that plaintiff's father was a naturalized citizen of the United States at the time of Plaintiff's birth, but specifically denies that plaintiff is now a citizen of the United States.

3. Defendant has no knowledge as to the location of plaintiff's permanent residence and therefore puts plaintiff to proof thereon.

4. Admits the allegation of Paragraph IV.

5. Admits the allegation of Paragraph V.

6. Admits the allegation of Paragraph VI.

7. Admits the allegations of Paragraph VII.

8. Answering Paragraph VIII defendant has no information as to whether or not plaintiff ever renounced his United States citizenship; as to the balance of said Paragraph, defendant denies each and every allegation and matter therein contained and the whole thereof.

9. Denies the allegations of Paragraph IX.

For a further and separate answer and defense defendant alleges as follows:

10. That the order of the commissioner of April 20, 1949, directed to plaintiff and plaintiff's wife and four sons as more particularly set forth in Paragraph VI of plaintiff's complaint, requiring them to depart voluntarily from the United States of America within three months from the date of notification of such order, was a final administrative denial within the contemplation of Section 1503 Title 8 USC, and the within action having been instituted by plaintiff more than five years after the entry of said final order, his right to proceed under Section 2201, Title 28, USC, is time barred.

For a second further affirmative answer and defense, defendant alleges as follows:

11. That plaintiff while residing in a foreign land, to wit: Finland, and after attaining the age of twenty-one years, entered military service in the Finnish army in connection with said service and took oaths of allegiance to the Finnish Government

and voted in a political election in Finland, a foreign state; that by virtue of said oaths of allegiance upon entering the military service and voting in the political elections of Finland plaintiff thereby divested himself of citizenship in the United States of America under the Act of Congress of March 2, 1907, (34 Stat. 1228) as amended.

Wherefore Defendant having fully answered plaintiff's complaint herein, prays that the same be dismissed and held for nought and that defendant be awarded his costs and disbursements herein.

C. E. LUCKEY,

United States Attorney for
the District of Oregon;

/s/ VICTOR E. HARR,

Assistant United States
Attorney.

Affidavit of service by mail attached.

[Endorsed]: Filed October 26, 1956.

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

In none of the cases cited by the Government does it appear that the citizen did not know that he was a citizen at the time he did the things which were alleged to have cost him his citizenship. In-

deed, this case may be one of first impression in that respect. Plaintiff to submit Findings.ⁿ

Dated March 14, 1957.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed March 14, 1957.

United States District Court
District of Oregon
Civil Action No. 8189

URHO PAAVO PATOKOSKI,

Plaintiff,

vs.

HERBERT BROWNELL, JR., as Attorney Gen-
eral of the United States of America,

Defendant.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND JUDGMENT

The above-entitled cause came regularly on for trial on October 29, 1956, before Honorable Claude McColloch, District Judge of the above-entitled Court, the plaintiff appearing in person and by William A. Martin, one of his attorneys, and the

ⁿ "Expatriate" and "abandonment" are used interchangeably in the decisions. "Intentional relinquishment of a known right" is the classic definition of abandonment.

defendant appearing by Victor E. Harr, Assistant United States Attorney, and testimony and evidence on behalf of the plaintiff and the defendant having been presented, and the Court having heard the oral statements and oral arguments of the respective counsel for the parties, and having considered the written briefs of the parties, and now being fully advised in the premisses, now does hereby make and enter the following

Findings of Fact

I.

The plaintiff was born on July 19, 1907, at Meri-jarvi, Finland.

II.

The plaintiff's father, Matti Niemela, was a naturalized citizen of the United States of America at the time of the plaintiff's birth, having been naturalized in the above-entitled Court at Portland, Oregon on August 13, 1894. The plaintiff's father returned to Finland several years after he was naturalized, where he married, and the plaintiff was born as issue of such marriage.

III.

At the time of the plaintiff's birth and at all times since his birth, the plaintiff has been, and is now, a national and citizen of the United States of America, possessing all of the rights, privileges and immunities of such citizenship.

IV.

The plaintiff's permanent residence is within the District of Oregon.

V.

The defendant is the duly appointed and acting Attorney General of the United States of America, and as such is the head of the Department of Justice of the said United States of America, and of the Immigration and Naturalization Service, which is an agency of the said Department.

VI.

The defendant, as the head of such Department and of such agency, is empowered to require the voluntary departure or deportation of aliens from the United States of America who are not lawfully within the United States of America.

VII.

The plaintiff was required to register for universal military training under the laws of the Republic of Finland when he reached the age of 18 years. When he was 20 years of age he was required to enter military service for training under the universal military training laws of such republic. At that time he took an oath of allegiance to the Finnish Government. The plaintiff served in the Finnish Army on three occasions, from March, 1928, to May, 1929; from October, 1939, to July, 1940; and from June, 1941, to October, 1944. He did not take an oath of allegiance to the Finnish Government

upon entering service the last two times. The plaintiff entered the Finnish Army as a private, and at the end of his third period of service he had attained the rank of first lieutenant. All advancement in rank of the plaintiff was automatic, based on his length of service. The plaintiff never volunteered for, nor made application for officer's training, nor any other training with a view to securing advancement in rank.

VIII.

The plaintiff voted in the general political election in Finland in approximately 1946. At that time all persons were urged to vote to keep Communists from gaining control of the Finnish Government.

IX.

The plaintiff's father died in 1928. His mother died in 1945. After his mother's death, the plaintiff found among her personal belongings the Certificate of Naturalization which was issued to his father at the time of his father's naturalization. The plaintiff lived approximately six hundred miles from the nearest United States Consul's office, which was located at Helsinki, Finland. The plaintiff was not told by his parents or any other person that he was a citizen of the United States of America at the time of his birth, and did not know until he was so informed by the Department of Immigration and Naturalization that he was a citizen of the United States of America at the time of his birth. After his mother's death, the plaintiff determined to come

to the United States of America, and secured a six-months' visitor's visa to visit the United States of America and study construction techniques. He and his family arrived in the United States of America in 1947. Prior to the end of the six-month period of his visa the plaintiff requested an extension of his right to stay in the United States of America. This request was denied, and a hearing in deportation proceedings was held by the Department of Immigration and Naturalization at which time the plaintiff produced his father's Certificate of Naturalization. The said agency thereafter, some two years later informed the plaintiff that he had been a citizen of the United States of America at the time of his birth, but had lost such citizenship by serving in the Finnish Army.

X.

On or about April 20, 1949, the Commissioner of the said agency entered an order in deportation proceedings against the plaintiff, and Toini Esteri Patokoski, his wife, and Timo Matti Juhani Patokoski, Pekka Jouko Kalevi Patokoski, and Paavo Esa Antero Patokoski, the plaintiff's minor sons, requiring them to depart voluntarily from the United States of America within three months from the date of notification of such order.

XI.

Private bills for the relief of the plaintiff and his family, to consider them as legally admitted residents of the United States of America, were intro-

duced in the Congress of the United States of America but such bills failed of passage.

XII.

Application was made to the Board of Immigration Appeals for suspension of deportation under the provisions of Section 244 (a) (1) of the Immigration and Nationality Act of 1952, on the ground that deportation of the plaintiff and his family from the United States of America to Finland would result in exceptional and extremely unusual hardship, but relief to the plaintiff and his family under this act on such grounds was denied.

XIII.

On or about July 7, 1955, the Department of Immigration and Naturalization delivered to the plaintiff, his wife and his minor sons, a notice of intention to recommend the entry of an alternate order to the effect that if they did not voluntarily depart from the United States of America on or before July 30, 1955, the order requiring their voluntary departure would be withdrawn without further notice or proceedings and they would be deported from the United States of America. On or about December 30, 1955, the said department, acting by and through the said Board of Immigration Appeals, ordered the plaintiff and his family to voluntarily depart from the United States of America within a period of 30 days from the date of their receipt of such order, and further ordered that upon

the failure of the plaintiff and his family to so depart within such period of time, a warrant for their deportation be issued and executed.

XIV.

The plaintiff's surname was duly and regularly changed by decision of the Governor of the Province of Oulu, Finland, made and entered on February 9, 1939, from "Nemela" to "Patokoski."

Based upon the foregoing Findings of Fact, the Court now makes the following

Conclusions of Law

I.

The Court has jurisdiction of this cause by virtue of the provisions of Section 2201 of Title 28, as authorized by Section 1503 of Title 8 (Act of June 27, 1932, C. 477, Title III, ch. 3, Section 360, 66 Stat. 273), commonly known as the United States Nationality Act of 1952.

II.

The plaintiff could not expatriate himself or lose or abandon his United States of America Citizenship by taking an oath of allegiance to the Finnish Government or by serving in the Finnish Army or by voting in a Finnish election because he did not know he was a citizen of the United States of America when he did those things, and the plaintiff has not expatriated himself or lost or abandoned his United States of America citizenship by doing those things with such lack of knowledge.

III.

This action is not time barred.

IV.

The plaintiff did not expatriate himself by residing in Finland from the time of his birth to 1947.

V.

The plaintiff is entitled to be awarded a judgment and decree herein declaring and adjudging him to be a citizen and national of the United States of America and declaring and adjudging him entitled to all the rights, privileges and immunities of a national and citizen of the United States of America.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court now makes the following

Judgment

Now Therefore, it is Hereby Considered, Ordered and Adjudged as follows:

I.

That the plaintiff, Urho Paavo Patokoski, be and he is hereby adjudged and declared to be a citizen and national of the United States of America and entitled to all the rights, privileges and immunities of a national and citizen of the United States of America.

II.

That the plaintiff, Urho Paavo Patokoski, be and he is hereby adjudged not to have expatriated him-

self as a citizen or national of the United States of America and not to have lost or abandoned such citizenship by serving in the Finnish military service or voting in a Finnish political election or taking an oath of allegiance to the Government of Finland or residing in Finland from the time of his birth to his departure therefrom to the United States of America in 1947, or in any other manner.

Dated this 1st day of April, 1957.

/s/ CLAUDE McCOLLOCH,
Chief Judge.

Service of copy acknowledged.

[Endorsed]: Filed April 1, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Urho Paavo Patokoski, Plaintiff, and his attorneys, Davis, Jensen, Martin & Robertson:

Notice is hereby given that Herbert Brownell, Jr., as Attorney General of the United States of America, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the Judgment entered in the above-entitled cause on April 1, 1957, in favor of plaintiff herein.

Dated this 20th day of May, 1957.

C. E. LUCKEY,
United States Attorney;

/s/ VICTOR E. HARR,
Assistant United States Attorney, of Attorneys for
Defendant.

[Endorsed]: Filed May 29, 1957.

[Title of District Court and Cause.]

Civil No. 8189

MOTION FOR EXTENSION OF TIME FOR
FILING THE RECORD ON APPEAL AND
DOCKETING THE WITHIN ACTION IN
THE U. S. COURT OF APPEALS, NINTH
CIRCUIT

Comes now the defendant above named by and through his attorneys, C. E. Luckey, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, and based upon the Affidavit of Victor E. Harr, attached hereto and by this reference made a part hereof, moves the Court for an order extending the time for filing the record on appeal and docketing the within action in the United States Court of Appeals for the Ninth Circuit, to ninety days from the date of filing of said Notice of Appeal. This motion is made pursuant to Rule 73(g) of the Federal Rules of Civil Procedure.

Dated this 1st day of July, 1957.

C. E. LUCKEY,

United States Attorney, for
the District of Oregon;

/s/ VICTOR E. HARR,

Assistant U. S. Attorney.

AFFIDAVIT

United States of America,
District of Oregon, County of Multnomah—ss.

I, Victor E. Harr, being first duly sworn on oath,
depose and say:

That I am an Assistant United States Attorney for the District of Oregon and one of the attorneys for appellant in the cause set forth in the motion of which this Affidavit is a part (Civil No. 8189); that following the Court's Opinion and the entry of the Judgment herein, the question of whether or not to appeal was referred to the Department of Justice, Washington, D. C.; that following the entry of judgment herein a protective notice of appeal was filed to enable the Solicitor General to analyze the facts and law involved herein and to determine finally as to whether or not said appeal should be prosecuted; that your affiant, based upon a telegram from the Department of Justice, is advised that the recommendation of the Department of Justice to the Solicitor General as to whether or not an appeal herein should be finally prosecuted, has been with-

held pending Supreme Court decisions on related issues, and which said decisions have not as yet been rendered.

I further depose and say that the last date that the record on appeal may be filed with the Clerk of the United States Court of Appeals for the Ninth Circuit, is July 8, 1957; that to await the rendition of the Supreme Court decision as aforesaid, additional time is requested within which to file the record and docket the appeal, as aforesaid; that this affidavit is made in support of a motion to extend time to file the record and docket the appeal with the Clerk of the United States Court of Appeals for the Ninth Circuit.

/s/ VICTOR E. HARR.

Subscribed and sworn to before me this 1st day of July, 1957.

R. DeMOTT,
Clerk;

By /s/ T. LUND,
Deputy.

[Endorsed]: Filed July 3, 1957.

[Title of District Court and Cause.]

ORDER

This matter coming on to be heard *ex parte* this day upon motion of defendant through his attor-

neys, C. E. Luckey, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, for an order extending time for filing the record on appeal and docketing the within action in the United States Court of Appeals for the Ninth Circuit, and the Court being fully advised in the premises, it is hereby

Ordered that the time for filing the within record on appeal and docketing the action be, and it is hereby extended, to ninety days from the date of the filing of the Notice of Appeal herein.

Dated this 3rd day of July, 1957, at Portland, Oregon.

/s/ CLAUDE McCOLLOCH,
Chief Judge.

[Endorsed]: Filed July 3, 1957.

United States District Court,
District of Oregon

Civil No. 8189

URHO PAAVO PATOKOSKI,

Plaintiff,

vs.

HERBERT BROWNELL, JR., an Attorney General of the United States of America,

Defendant.

Before: Honorable Claude McCulloch, Chief Judge.

Appearances:

MR. WILLIAM A. MARTIN,
Of Attorneys for Plaintiff.

MR. VICTOR E. HARR,
Assistant United States Attorney,
Of Attorneys for Defendant.

Portland, Oregon, October 29, 1956

TRANSCRIPT OF PROCEEDINGS

Mr. Harr: Your Honor, in this case of Patokoski vs. Brownell, Civil No. 8189, I propose at this time to file an amended answer to the complaint. Counsel was furnished a copy of it in the mail Friday and received it Saturday. It urges one additional defense and takes away some of the other questions which I considered moot. The additional defense is that the plaintiff had voted in an election in Finland. I ask leave of the Court at this time to file the amended answer.

The Court: I have looked at the files. I have a general idea of what this is about. Do you have testimony?

Mr. Martin: Yes, your Honor, we do have the testimony of the plaintiff, and we have some records from Finland which have been translated into English. We would like to have those admitted too for the purpose of this hearing.

The Court: Proceed.

Mr. Martin: May I make a short statement?

The Court: Yes.

Mr. Martin: If the Court please, Mr. Patokoski,

the plaintiff here is seated with me here at the counsel table. Briefly the facts are these:

Mr. Patokoski's father, whose name was Matti Niemela, came to this country as a young man and was naturalized. He subsequently returned to Finland and was there married and had, I believe, six children, one of [2*] whom is Mr. Patokoski sitting here.

Our evidence will show that Mr. Niemela passed away in 1929, I believe it was, and subsequently his children assumed their family name which was Patokoski.

I have a certificate from the proper authorities in Finland showing that that change of name was made. I believe that there is a little lapse in the records of the Immigration and Naturalization authorities in that respect. Mr. Patokoski was called into the service. They had a universal military prescription law in Finland, and he was called into the service just about three months before he reached his twenty-first birthday. At that time he took an oath of allegiance to the Finnish Government, and then he served his year in the service. Later on, when they had what they called the Winter War between Finland and Russia, he was again called into the service as was every able-bodied man in Finland.

Later on he was again called into the service, but on each of these two latter occasions he did not take any oath of allegiance.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Now, he also voted on at least one occasion that he says he can recall, and he believes that that was about 1946. The evidence will be that at that time there were great exhortations on behalf of all Finnish people to vote for the reason that Finland of course, had been devastated [3] by the War; she had joined Germany in the fight against Russia, and there was a constant attempt by Russian-inspired parties and communist-minded people to take over the control of the Finnish Government, and there were great exhortations made on all Finnish people to vote in the election of 1946, at least, to prevent Finland from becoming a communist-controlled nation. So he voted at that time, and he believes that it was a presidential election. I don't think there is any question but what it was a presidential election.

Our evidence will be to the effect that any service he rendered in the military service of Finland was involuntary, without his own voluntary request, and any promotions that he had came through the usual routine promotions, based on the fact that he had completed a certain amount of service. He never applied for any service or any officer candidate school or anything like that. He went along because he had to.

We will have in evidence the military proscription law and a translation of a portion of it, which shows that any person who did not submit himself to service would subject himself to imprisonment in, possibly, a prison camp.

Our other points will be based on the law as it

applies to the facts, your Honor. We will have two contentions: First, that any service that he rendered in the military was involuntary; secondly, we are contending that [4] he was a person holding dual citizenship. He was born in Finland of a naturalized American citizen, and having been born in Finland he was considered a citizen of Finland by the Finnish Government. He was also a citizen of the United States by birth. Under those circumstances, I do not believe that a law stating that he has expatriated himself is constitutional. We will have some cases on that, your Honor.

Now, I might say further that Mr. Patokoski—and our evidence will show this—was not aware of his rights as a citizen of the United States until he was in this country. His father had told the family that he was a naturalized citizen of the United States, but nothing had ever been discussed in the family regarding the rights of the children as applied to the children of a naturalized citizen of the United States. Consequently, it was not until 1945—I believe that was the date—when Mr. Patokoski's mother passed away, and in going through her papers and personal effects he found the naturalization certificate of his father. And about that time there were reprisals being taken by the Russian Government for so-called war crimes against persons who had been in the Finnish Army, and especially officers in the Finnish Army. And Mr. Patokoski had attained the grade of lieutenant in the engineers in the Finnish Army through time pro-

motions, so it became necessary for him to get out of Finland just as soon as he could. [5] Otherwise, he might have to go to Russia, an internment camp, for so-called war crimes.

He gathered up what possessions he had and brought along this naturalization certificate. He didn't know the effect of it; had never seen it before, as far as he knows, and came to the United States on a visitor's visa. When he got here he sought to have extensions of the visitor's visa, and at that time I think there were several hearings, according to him, by the Immigration and Naturalization authorities. And about two years after he had first come to this country and had had his first hearing, he learned through communications from the Immigration and Naturalization authorities that he was a United States citizen by birth, but they told him that he had lost his citizenship by virtue of having served in the Finnish military service.

At that time the Immigration and Naturalization Service deemed the voting to be of no effect for the reason that he had served in the Finnish Army. Therefore, they felt he had expatriated himself and consequently they didn't consider the voting. Now they are raising both grounds as grounds for expatriation: One, that he had served in the Finnish Army and had taken an oath of allegiance to the Finnish Government and, second, that he had voted.

That is the gist of the case, your Honor, and our evidence will be to the effect that I have indicated. [6]

Mr. Harr: I don't think I have anything. We

resist these contentions. We say that it is not a legal defense that he did not know that he was a citizen of the United States, if he was a citizen. We concede that he was born a citizen, and he is charged with knowledge of all the laws. We say that the taking of the oaths of allegiance to Finland were voluntary, and therefore that he expatriated himself and, by the same token, his voting caused him to become expatriated.

The Court: Proceed.

URHO PAAVO PATOKOSKI

the plaintiff herein, was produced as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Martin:

Q. What is your full name?

A. Urho Paavo Patokoski.

Q. Where do you now live?

A. In Portland.

Q. What is your address?

A. 2221 Northeast Ainsworth.

Q. How long have you lived there?

A. About six years in that place.

Q. How long have you lived in Portland?

A. Nine years and eight months, about. [7]

Q. Do you consider Portland your permanent residence? A. Where I lived at that time?

Q. Do you understand my question? Do you consider Portland your permanent residence?

(Testimony of Urho Paavo Patokoski.)

A. Yes.

Q. What is your business, Mr. Patokoski?

A. Building contractor.

Q. How long have you been so employed?

A. Nine years here.

Q. Did you do that kind of work before you came to Portland? A. Yes.

Q. For how long?

A. About more than ten years, anyway—about twelve years, or something.

Q. Where was that? A. In Finland.

Q. When did you come to Portland?

A. From Finland.

Q. What year? A. 1947.

Q. Did you bring your family with you?

A. Yes.

Q. How many members of your family are there? A. Three sons and my wife.

Q. Where were you born, Mr. Patokoski? [8]

A. Merijarvi, in Finland, in 1907, July 19th.

Q. Who was your father?

A. Matti Niemela.

Q. What was your mother's name?

A. Aleksandra Niemela.

Q. Had your father ever been in this country?

A. Yes.

Q. Was he married when he was in this country?

A. No.

Q. When was he married?

A. I don't know.

Q. Was it after he returned to Finland?

(Testimony of Urho Paavo Patokoski.)

A. Yes.

Q. Did he ever come back to this country after he went back to Finland? A. No.

Q. Now, did your father ever tell you anything about his visit to the United States?

A. He said some time that he was a citizen.

Q. Did he ever tell you anything else?

A. No.

Q. Did you ever ask him whether you had any citizenship rights?

A. No, we didn't understand.

Q. You say you didn't understand anything about that [9] situation? A. No.

Q. Did you ever talk with your mother about it?

A. Pardon me?

Q. Did you ever talk with your mother about it.

A. No.

Q. Did you ever talk with anybody else in Finland about it? A. No.

Mr. Harr: Your Honor, for the sake of the record I should like to urge an objection to this line of inquiry because we say it doesn't make any difference whether he was told or whether he made inquiry as to his citizenship.

The Court: Admitted subject to the objection.

Q. (By Mr. Martin): Did you ever visit the American consul?

A. Not before I make application for this trip.

Q. How far did you live from where the American consul was located? A. About 600 miles.

Q. The nearest American consul was where?

(Testimony of Urho Paavo Patokoski.)

A. In Helsinki.

Q. Now, did you serve in the Finnish Army?

A. Yes.

Q. When did you first serve in the Finnish Army? A. In 1928.

Q. Were you called before that? [10]

A. Yes. We had that in 1926 there.

Q. You were called the first time in 1926?

A. Yes.

Q. Did you serve at that time?

A. No, only the draft, registered.

Q. You registered at that time?

A. Yes.

Q. But you did not go into the service?

A. No.

Q. Was that a universal service?

A. Yes, it is.

Q. Did everybody have to serve?

A. Yes, all men.

Q. At what age did they have to go into the service? A. I think it was 20 years.

Q. When they became 20 years old?

A. Yes.

Q. What were you required to do when you entered the service? A. Pardon me?

Q. Did you have to take an oath? A. Yes.

Q. How did you take it and where did you take it?

A. Well, we take—I don't remember in what way, but we stand up there, but we don't say anything.

(Testimony of Urho Paavo Patokoski.)

Q. Did you have to say any words or repeat any words of [11] any kind?

A. No, I don't remember of any.

Q. Did you have to hold up your hand in any way? A. Yes.

Q. How many were there present when you took it? A. How many men?

Q. Yes.

A. Maybe two or three hundred at the same time. All our troop.

Q. Your entire troop went in at that time; is that right? A. Yes.

Q. And that was all there was to the entry of yourself into the military service of Finland; is that right? A. Yes.

Q. Did you serve then in the military?

A. Yes.

Q. For how long?

A. That first time 15 months, and the second time 10 months, about, and the third time a little over 3 years.

Q. When was the second time you went into the service?

A. What we call the Winter War, 1939.

Q. You served 10 months at that time?

A. Yes.

Q. When was the last time that you went into the service, then, the third time? [12]

A. It was 1940. I don't remember—October or something, 1940.

(Testimony of Urho Paavo Patokoski.)

Q. When did you get out of the service at that time? A. '44, it was.

Q. What rank did you have when you went in the service the first time? A. Pardon?

Q. What rank?

A. Well, I started, you mean? I don't understand that question.

Q. Were you a private or lieutenant?

A. No, sergeant.

Q. Sergeant? A. Yes.

Q. That was the rank that you had the first time? A. Yes.

Q. When you went into the Army the first time?

A. Yes.

Q. What were you the second time?

A. The same thing.

Q. What were you the last time?

A. Second lieutenant.

Q. Did you apply for any advancement to second lieutenant? A. No.

Q. Did you apply for any candidate school or officership, [13] or anything like that?

A. No.

Q. What is the lowest rank there is in the Finnish Army? A. Pardon?

Q. What is the lowest rank there is in the Finnish Army?

A. I don't understand the question.

Q. What is the lowest soldier there is in the Finnish Army? A. Corporal.

Q. Corporal? A. Yes.

(Testimony of Urho Paavo Patokoski.)

Q. How is it that you started out as sergeant?

A. I don't understand the question.

Q. You said when you first went into the Finnish Army you were a sergeant.

A. Yes, when I came out from there.

Q. When you came out? A. Yes.

Q. You were a sergeant? A. Yes.

Q. What were you when you went in?

A. Private.

Q. Is private the lowest?

A. No, that is corporal.

Q. Corporal is the lowest officer?

A. Yes. [14]

Q. What is the lowest soldier? Private?

A. Yes.

Q. So you went in as private? A. Yes.

Q. And you came out as sergeant the first time; is that right? A. Yes.

Q. And the second time you went in as sergeant?

A. Yes.

Q. What were you when you came out?

A. Lieutenant.

Q. Lieutenant? A. Yes.

Q. Then the third time you went in as a second lieutenant? A. Yes.

Q. Were you still a second lieutenant when you were released from the service? A. Yes.

Q. You were still a second lieutenant then in 1944, when you got out of the Army?

A. 1944. I think it was 1944.

Q. But you were still a second lieutenant?

(Testimony of Urho Paavo Patokoski.)

A. Yes.

Q. When you went into the Army again in 1939—

A. No. [15]

Q. Wait a minute. Listen to my question. When you went into the service in 1939—that is the second time—did you have to take an oath?

A. No.

Q. When you went into the service the third time—in 1942, was it?

A. '40.

Q. When was it?

A. '40.

Q. In 1940 when you went in that time did you have to take an oath?

A. No.

Q. So the only time you took an oath was the first time, when you went into the service as a private?

A. Yes.

Q. Now, when did your father pass away, Mr. Patokoski?

A. I would say about 1929.

Q. When did you change your name?

A. 1939.

Q. Why did you change it?

A. Well, because this Niemela is not our real name. Patokoski is our real name. My father, he bought some house at that time, when he was a young man, and that house's name was Niemela and they started calling him that.

Q. Do I understand that his right name was Patokoski, but [16] that he had lived in somebody else's house when he was a small boy?

A. Yes.

Q. And the people who kept him, their name was Niemela?

A. Yes.

Q. So they called him Niemela?

A. Yes.

(Testimony of Urho Paavo Patokoski.)

Q. Then when you found out what your right name was you had it changed; is that right?

A. Pardon?

Q. When you found out what your right name was you had it changed? A. Yes.

Q. And have you been using the name Patokoski ever since 1939, when you had it changed?

A. Yes.

Q. Now, when is the first time that you saw your father's naturalization papers for United States citizenship?

A. Well, when my mother brought out that paper before she died. He left that paper, and I saw that paper.

Q. How long before she died did you see the paper? A. About one week.

Q. When did she pass away?

A. 1945, I think.

Q. Did you go see anybody in Finland about that paper [17] at that time? A. No.

Q. Did you have any desire to come to the United States? Did you want to come to the United States? A. When?

Q. In 1945. A. No, in '47.

Q. Well, when did you decide that you wanted to come to the United States?

A. Well, that is after we finished our war, when I got out from the war. And I started thinking if I can make some trip to America. I wouldn't remember—that was 1945 or '44. Possibly it was 1945, when I write a letter to American consul, to Hel-

(Testimony of Urho Paavo Patokoski.)

sinki, to find out if ther is anything possible to make a trip. And I don't remember what—I got an answer, anyway, and they explained to me what I had to do, and also I had to explain for them why I will make that trip. And after that I make my application.

Q. Did you have any idea at all that you were a United States citizen? A. No.

Q. What were the circumstances of your leaving Finland to come to the United States? Just tell exactly how it came about, why you left and so on.

A. Well, that is very difficult to explain, because I make [18] my application to come to the United States, and when I make this application they explain further for me if I will wait about six months, six more months, I can go as an immigrant. But at the same time happen so many things, and we have very hard pressure by communists in Finland at that time because we lost the war, and military officers from Russia occupied in Finland some cities, main points, and they were communists, and our home communists, they make list of some officers who had served in Finnish Army, and some officers sent out from Finland to Russia for imprisonment. Now when I could have visa to America—also my friends find paper, or some notebook, where here is my name, and they might send me to Russia. When they explained for me in consulate of United States that if I wait six more months I can enter by immigrant visa, but I said over there I don't can

(Testimony of Urho Paavo Patokoski.)

wait any more; if I can possibly get my student visit I had to leave.

Q. In other words, you were afraid that you might be picked up and sent to Russia, is that correct?

A. That is very hard to know, what happens after that, if I had been.

(Short recess.)

Q. I think we had just reached the point where you had to leave Finland, you felt, because you might possibly be charged with war crimes and be sent to Russia as having been an officer in the Finnish Army; is that right? [19] A. Yes.

Q. Where were you living at the time that you made your application to come to this country?

A. I lived in Oulu.

Q. Yes. Is there an American consul there?

A. No.

Q. How far is Oulu from Helsinki?

A. About 600 miles.

Q. So you had to go to Helsinki to make your application? A. Yes.

Q. Now, do you know what would have happened to you if you had not gone into the Finnish Army when you were first called to register?

A. Well, that is pretty hard to know, because everybody had to go. There isn't any question.

Q. What if you didn't go?

A. Well, they would pick you up.

Q. They would pick you up? A. Yes.

(Testimony of Urho Paavo Patokoski.)

Q. And do what?

A. And take you over to the service.

Q. What if you refused to serve after they picked you up? A. Well, put you in jail or something.

Q. Did you vote while you were in Finland?

A. Yes. [20]

Q. How many times did you vote, do you remember? A. I remembered one time.

Q. Do you remember when that was?

A. In Oulu.

Q. When, what year?

A. I don't remember, even, what year, but after the war times.

Q. It was after the second World War was over?

A. Yes.

Q. Do you have a recollection of just voting one time? Is that the best of your recollection?

A. Pardon me?

Q. Do you just recall voting the one time in 1946 or thereabouts?

A. Yes. I remember because our war is over, and we stopped shooting and make peace, and we have our home communists and the Russian communists and the election propaganda, so the only way we can do over there at that time everybody who can had to vote.

Q. In order to try to preserve the Finnish Government from the communists everybody was asked to vote. Is that my understanding of what you are trying to say? A. Yes.

Q. Now, was that the reason you voted?

(Testimony of Urho Paavo Patokoski.)

A. Yes. [21]

Q. Is that the only time you can remember voting?

A. I don't remember any other time.

Q. Did you have to register to vote?

A. No.

Q. How did they determine whether you were entitled to vote or not?

A. Well, they take the register, what they call—the minister, church minister, he keeps all the registers.

Q. In Finland the church minister keeps track of all the registrations? A. Yes.

Q. They keep track of where you are born and where you live also?

A. Yes, sir. Also we have a register by covenant, but they have to work to get it, make a book.

Q. You don't have to make any extra registration of any kind in order to vote? A. No.

Q. Now, you finally came to this country?

A. Yes.

Q. When did you come to this country?

A. 1947.

Q. Did you have your family with you?

A. Yes.

Q. And where did you come first? What city did you arrive in? [22]

A. Well, we came to New York first.

Q. New York City? A. Yes.

Q. Where did you go from there?

A. To Portland.

(Testimony of Urho Paavo Patokoski.)

Q. You came directly to Portland?

A. Yes.

Q. You didn't stay in New York more than just a few days?

A. Oh, about four days. We stopped in Ohio only one day.

Q. You visited some friends there, did you?

A. Yes.

Q. Then you came to Portland? A. Yes.

Q. And you have been here ever since?

A. Yes.

Q. Now, did you go to the Immigration and Naturalization office here in Portland?

A. Pardon me?

Q. Did you see the Immigration and Naturalization Service in Portland here? A. Yes.

Q. What was your purpose in going to their office?

A. The first time, when we stay here six months, we have to make application for an extension, six more months.

Q. Did you get an extension of time? [23]

A. No, we make that application for six more months, and they said that is O.K.; they will call up for us when they know about it. And we waited for a call and we waited about six more months at the time, after we make six more months' application. At that time they said for us—that is all right, and they will call for us when they know. And I don't remember how many more months that we

(Testimony of Urho Paavo Patokoski.)

got. No, they don't give any more extension of time for us.

Q. So they notified you that they would not give you any more extension after you waited and made two additional applications? A. Yes.

Q. Did they give you a hearing? Did you have a hearing?

A. Yes. I don't remember even that time, but they called some time from the immigration office——

Q. You came up to the immigration office?

A. Yes.

Q. They asked you questions and you gave them answers? A. Yes.

Q. When did you first tell them about your father's naturalization certificate?

A. I don't remember what time, but when they asked me what is my citizenship, and I then—I feel sure I am Finland, but my father was citizen of United States.

Q. Did you tell them anything about what your wish was [24] to find out whether you were or were not a citizen of the United States?

A. Only I had my father's citizen papers, and I left that at the immigration office.

Q. You left it with them?

A. Yes.

Mr. Martin: Do you happen to have that?

Mr. Harr: Yes (handing document to counsel).

Mr. Martin: I would like to have this marked.

(Testimony of Urho Paavo Patokoski.)

(Certificate of Naturalization of Matt Niemela, dated August 13, 1894, was thereupon marked Plaintiff's Exhibit 1 for identification.)

Mr. Martin: Would you give that to the witness.

Q. Mr. Patokoski, you have Plaintiff's Exhibit 1 for identification. Is that the naturalization certificate that you brought with you from Finland for your father's naturalization in the United States? A. I think so.

Q. That is the one you brought with you from Finland?

A. Yes. I don't remember even, but I remember that it like this.

Mr. Martin: May the Court please, I move the introduction of Plaintiff's Exhibit 1 for identification in evidence.

Mr. Harr: No objection. [5]

The Court: Admitted.

(The naturalization certificate referred to was received in evidence as Plaintiff's Exhibit 1.)

Q. (Mr. Martin): Did you receive any word from the Immigration and Naturalization Service after that regarding your citizenship?

A. Yes, I don't remember—we got letter that I never had been citizen of the United States.

Q. The letter was from the Immigration Service?

A. Yes, from Portland.

Q. They said that you were not a citizen of the United States? A. Yes.

(Testimony of Urho Paavo Patokoski.)

Q. Did they say whether you had ever been?

A. No.

Q. They said you had never been a citizen?

A. Yes.

Q. Did you get any further instructions from the Immigration and Naturalization Service?

A. No. We got letter after—when we lived here two years we got letter from Washington, D. C., and they explained that I was citizen before but positively lost my citizenship because I went into Finnish Army.

Q. In other words, when you heard from Washington, D. C., [26] then they told you that you had been a citizen of the United States but had lost your citizenship; is that right? A. Yes.

Q. Did you get any further instructions from the Immigration and Naturalization Service with regard to your staying here in Portland?

A. Well, at that time it is pretty hard—when we spent about one year here, and our friends in Portland and Astoria, they made application for Congress and they asked for us we stay permanently here, because Russia has some more ultimatum to Finland, and we don't know what happened over there. Also, at that time if we have to go back to Finland it is very difficult for us, because I have to take care of my family and our son is very small at that time.

Q. How old are your sons now, Mr. Patokoski?

A. Eighteen and sixteen and fourteen.

Q. Are they going to school here now? Do they

(Testimony of Urho Paavo Patokoski.)

go to school here? A. Yes.

Q. Did you get any orders from the Immigration and Naturalization Service to leave Portland and go back to Finland? A. Yes.

Q. Because of a private bill that was introduced in Congress, though, you didn't have to go; is that right? [27] A. Yes.

Q. Have you received any further orders within the last year?

A. No, no, because we have private bill in Congress.

Q. Did you get a notice last summer?

A. Yes, last summer we have that we had to leave. I don't remember; June 30th or July 30th; something like that.

Q. Of last year?

A. Yes—no, I don't remember if it was last year or this year.

Q. Well, either last year or this year you were required to leave within a short period of time; is that right? A. We had also last year.

Q. Now, have you ever renounced your citizenship as a United States citizen? In other words, have you ever made a public statement that you were not a citizen of the United States?

A. Well, after all, now, I can understand myself—at that time when we lived in Finland, this was hard times, and much different times, and we have to go under so hard pressure all the time, because every man over there had to go to the service.

(Testimony of Urho Paavo Patokoski.)

The Court: Ask him the question again. He is not answering your question.

Q. (By Mr. Martin): I don't think you understood my [28] question, Mr. Patokoski. Other than being in the military service and voting in Finland, have you ever proclaimed or said that you were not a United States citizen?

A. No, I don't think so.

Q. You have not voluntarily become a citizen of any other country, have you? A. In Finland?

Q. Yes.

A. Well, everybody who born there is a citizen.

Q. If they are born over there they are considered a citizen of Finland? A. Yes.

Q. Now, when you became of age, when you became 21 years of age, did you ever tell anyone that you were not a United States citizen? A. No.

Q. Did you understand my question?

A. Pardon me?

Q. What I am trying to ask you—maybe you didn't understand me—when you became 21 years old, and ever after since you became of age up to the present time, have you publicly or in connection with any matter at all claimed that you were not a United States citizen? A. No.

Q. Now what is your claim at the present time? [29]

A. Because I don't know that in Finland.

Q. You didn't know whether you were or were not? A. No, I don't have any idea.

Q. When you found out you were a United

(Testimony of Urho Paavo Patokoski.)

States citizen at birth have you since then contended that you were a United States citizen?

A. Yes, and when I know that after two years what we spent here, and that comes out hope for me that I will be a citizen.

Q. Since that time you have been contending that you are a United States citizen? A. Yes.

Q. Have you ever done anything, to the best of your knowledge, other than this service in the Finnish Army and voting in Finland, to divest yourself of United States citizenship?

A. I don't think so.

Q. Now, this private bill that you spoke of in Congress, is that pending now? A. Not now.

Mr. Martin: You may cross-examine.

Cross-Examination

By Mr. Harr:

Q. You have tried many times to get a bill through Congress to permit you to stay here in this country? A. Yes.

Q. Your first bill was in the year 1948? [30]

A. I think so, yes.

Q. And the next one 1949? A. Yes.

Q. Two bills in 1951, a Senate and House bill?

A. Yes, I think so.

Q. Four bills in 1953?

A. I am not certain about that.

Q. Well, there were two, a House bill and a Senate bill in January of 1953? A. Possibly.

(Testimony of Urho Paavo Patokoski.)

Q. And a House bill and Senate bill later in 1953. Congress turned you down on all of those applications? A. Yes.

Q. When was the last bill presented to Congress, do you remember or do you know?

A. In this year.

Q. How many bills did you present after 1953?

A. I don't can say how many.

Q. Your immigration file has some of the applications but not all of them. There were, I believe, Senate and House bills in 1955. Are those the last ones that you presented? A. Yes, 1955.

Q. Those were turned down? A. Yes.

Q. Now in 1948 you had a hearing before the Immigration Service? A. Yes.

Q. At that time you had your minister interpret for you? A. Yes.

Q. And in that entire hearing the questions were translated by the minister and you gave your answers through the minister; is that correct?

A. Yes.

Q. So you did at that time understand all the questions that were given to you? A. No.

Q. You understood them after they were interpreted to you by the minister? A. Yes.

Q. I should have said translated to you. Now at that time, in 1948, September of '48, you said you were a carpenter, didn't you? A. Yes.

Q. You were not a contractor at that time?

A. Well, I take a small job at that time, but mostly I work as carpenter.

(Testimony of Urho Paavo Patokoski.)

Q. You came over here from Finland, did you not, to learn and study our construction methods?

A. Yes.

Q. So that when you could go back to Finland you could [32] put those practices into operation?

A. Yes.

Q. And do more for your people? A. Yes.

Q. Now that is the reason you came over here, to study; is that right? A. Yes.

Q. You were about 40 years old when you came to this country? A. Forty years, yes.

Q. You were asked the question, "Of what country are you a citizen or subject at this time?" And you answered, "Finland." Is that correct?

A. Yes.

Q. You thought you were a Finnish citizen at that time? A. Yes.

Q. You had always believed that you were a Finnish citizen; is that not correct? A. Yes.

Q. You had never been a citizen of any other country. That is what you said? A. No.

Q. You had not been. Under the Finnish law when would you become of age? How old would you have to be?

A. Pardon me. I don't understand that.

Q. You know what I mean by becoming of age, when you reach [33] the age of majority, when you can vote and do those things.

A. Oh, 21 years.

Q. Twenty-one years? A. Yes.

Q. Now when you were born you were a citizen

(Testimony of Urho Paavo Patokoski.)

or you thought you were a citizen of Russia; isn't that right? A. That is pretty difficult.

Q. When did Finland become a nation?

A. Well, we are under Russia at that time when I born, but our government is a little different. We have our own laws——

Q. Your own laws?

A. Yes, and own Congress and own Senate, even at that time.

Q. Did you send representatives to Moscow to participate in the Russian Government?

A. Yes, I think so.

Q. In other words, you were a province or a state?

A. Yes. It is all ruled all over, by the hand of Russia at that time.

Q. How old were you when the first World War ended?

A. Oh, I was born in 1907. Thirteen or twelve years old, I think so.

Q. Is that when Finland became a separate nation by itself? A. Almost '17, 1917.

Q. That is when Finland became a separate nation? [34] A. Yes.

Q. It was a democracy; is that right?

A. Yes.

Q. You voted in free elections at that time, or the people did?

A. Yes, but I don't can vote, no, but the people.

Q. You studied that in school, did you? How you were a democracy? A. Yes.

(Testimony of Urho Paavo Patokoski.)

Q. Was the democracy somewhat similar to our system of government in the United States?

A. I think so. That is the same.

Q. You were not under the domination of Russia after you became a democracy?

A. No, not any more, no. As I read from paper, Finland is the second country what got the democracy after United States.

Q. Yes, there was Czechoslovakia and Finland; is that right? A. Yes.

Q. You had regular elections in Finland, city elections, county and national, just as we have here?

A. Yes, the same.

Q. You went into the Army, you said, when you were 20 years old? [35] A. Yes.

Q. Now, when you reached the age of 21 and from then on until the second World War, your country still continued to be a free country; is that right? A. Yes.

Q. Free elections; anybody could vote?

A. Yes.

Q. Did your father vote, do you know?

A. I don't can't say to that, because I was so——

Q. You were about 20 years old when he died, just about the time you went into the Army?

A. Yes.

Q. Was he living then when you went into the Army?

A. Yes. When I came back after he died pretty soon.

Q. You don't know whether he voted or not?

(Testimony of Urho Paavo Patokoski.)

A. No. That is very hard to say, because I wasn't living home at that time.

Q. Were the people in Finland pretty proud of their right to vote in free elections?

A. Well, that is pretty hard to remember, but about 50 per cent or something, what will vote.

Q. Do the women have the right to vote over there? A. Women?

Q. Yes. A. Yes. [36]

Q. Now you had a pretty good education, didn't you? A. Pardon?

Q. You had a pretty good education?

A. Well, I think so.

Q. Just tell us about what education you did have.

A. Well, I have education from technical school, what we call construction engineer.

Q. That would be similar to our university education here in the United States?

A. Not be the same. That is not so high.

Q. Not quite so high as our university education?

A. No. That is technical school. That is a little lower.

Q. But that is what you trained yourself to be, a construction engineer? A. Yes.

Q. Building homes and buildings?

A. Well, pardon me. Usually we build bigger buildings, building like this, and bridge like that new Morrison Bridge, and highway construction and power-dam construction. Not so much home construction.

(Testimony of Urho Paavo Patokoski.)

Q. After you started working as a construction engineer did you travel a lot or did you remain pretty well at home?

A. Over there? We worked for big company and we called that the Cement Association, and I had to take care of north part of Finland, and I had to say how they could use cement, how they can make concrete.

Q. Was that away from home at that time?

A. Well, usually, how to use cement, highway construction and bridge construction and building construction.

Q. Where was it you had to vote? Did you have to do your voting at home or could you do it away from home?

A. No, I had to go out.

Q. Mr. Patokoski, when you were doing some of these large jobs such as building dams would you go away from home and stay away from home for awhile?

A. Yes, we had to go out.

Q. In Finland could you get what we call in the United States an absentee ballot so that you could vote and mail your vote in? Did you have such a thing in Finland?

A. Yes, it is. I understand now what you mean.

Q. Did you when you were away from home on the job and did others like you take advantage of that, to vote and mail your vote in?

A. Well, they had to pick up from the register's office, but because I was so far from the place I don't can do that. You had to pick up from home place.

(Testimony of Urho Paavo Patokoski.)

Q. So when you were away from home it wasn't easy to get a ballot to mail in; is that right?

A. Well, they had to pick up personally.

Q. Were you always away from home on election day or were [38] you at home at other times when elections were held?

A. I don't know if I understand correctly that question.

Q. I will restate it. Were you at home sometimes when the elections were held?

A. I remember that one time, that 1946 or '45, after war, because my work was in home city and I stayed home at that time.

Q. Is that the only reason you didn't vote before, because you were away from home? A. No.

Q. Why didn't you vote?

A. Well, because I was out from home so much, and I had to be about 270 days out from home at that time, when I worked for that Cement Association.

Q. You were about 40 years old when you came to the United States? A. Yes.

Q. So there would be 19 years that you lived in Finland after you reached the age of 21?

A. Yes.

Q. Are you telling us that during that 19 years there was only one election that you were living at home and could vote?

A. Oh, there is '39 to '45 we don't have any election at that time because we have our war. And I started working [39] for the Cement Association

(Testimony of Urho Paavo Patokoski.)

1937, and I worked—that is government, and we built highways and bridges, and I don't can stay home that time. I finished my school in 1934, and after that I worked for Government of Finland.

Q. When did the nation of Finland, as you state, come under the control of the communists?

A. All our independent time we have to fight against the communists, and in 1930, '34 and '35 very hard time. They like to take over the whole government at that time.

Q. Did you believe in communism at that time?
Did you believe in communism? A. No.

Q. At these elections there would be communists running on the ticket, running for election?

A. Yes, they have ticket also at that time.

Q. And there were some of the communists elected, were there? A. Pardon?

Q. Some of the communists were elected, I suppose?

A. Yes, I think so, yes, but I don't remember how much there was at that time.

Q. Did you take an active part in trying to see that they were not elected?

A. Yes, I was in outside cities, and at that time what happened for me, I am anticommunist accused, because [40] sometimes those communists will come to the job and they start talking and talking over there, and their leader over there, and I have to say something, and at that time they claim, why, that I am anticommunist.

(Testimony of Urho Paavo Patokoski.)

Q. That was after World War II you are talking about? A. No, before.

Q. Before that? A. Yes.

Q. Did you get up and make talks trying to get people to vote against the communists?

A. Well, I don't have any time for that, because I work for an outside city. I don't remember how many men I have in my job at that time.

Q. Talking about your military service a little bit, you went in as a private in 1928?

A. Yes.

Q. I think you said that you were promoted to sergeant, and this promotion was by virtue of your length of service; is that right? A. Yes.

Q. You were a pretty good soldier?

A. Well, usually I did every work what somebody gave for me. I went by my full understanding.

Q. All the boys that went into the service with you in 1928 didn't come out sergeants, did [41] they? A. Not all.

Q. In fact, most of them came out as privates?

A. Yes.

Q. You were promoted to corporal first, I suppose? A. Yes.

Q. Then in 1939 you went in as a sergeant and came out a second lieutenant, from sergeant to second lieutenant?

A. No, first lieutenant after 1939.

Q. In 1939 when you went into the service were you a sergeant then? A. Yes.

Q. Did you go to officers' training school?

(Testimony of Urho Paavo Patokoski.)

A. Yes.

Q. How did you get picked for officers' training school?

A. Because I was construction engineer.

Q. Did all construction engineers go to officers' training school, do you remember? A. Yes.

Q. Did they ask for it? Did they make application for officers' training school?

A. No. No, they had to go, because every people who has some education, higher education, they got officers' training.

Q. You were proud of your country, weren't you? You were proud of your little country of Finland?

A. I don't understand the question. [42]

Q. You were proud of your country?

A. That is new word for me.

Q. You were happy with your country?

A. In Finland?

Q. Yes.

A. Yes, I think so. But I have to say we was happy when we got our independence over there, and everybody knows and the whole world know in all our independent times we have so heavy pressure, like between east and west, and we don't can enjoy—all our living hard over there.

Q. You were ready at any time over there to fight for Finland's independence, weren't you?

A. Yes, I think so.

Q. You state in a letter to the Immigration Service dated October 25, 1948: "It is my convic-

(Testimony of Urho Paavo Patokoski.)

tion to uphold what is right and to oppose injustice and tyranny and therefore I have fought for little Finland which was attacked by a great country. The whole world condemned this attack upon Finland. Looking at it from the human point of view how could I have forfeited any possible claims which I may have had to United States citizenship. I am at all times ready to fight for the rights of this country in which I now live if an assault were made against it."

Now you felt that you were ready at any time, then, to fight for your little country? [43]

A. Yes, that is my feeling because I know nearly every people, every American citizen, will fight to hold freedom.

Q. And you were not ashamed, were you, when you stood up there and raised your right hand and said "I take allegiance to my country"? You were not ashamed, were you? A. No.

Q. You didn't feel ashamed of yourself when you stood up and swore allegiance to your country?

A. I don't have any question over there, because I feel so—every man for freedom feel the same way. But we don't have that question over there. We have to make no oath something like that.

Q. Now, Mr. Patokoski, you said that your service in the Army, being drafted, was involuntary. That is what you said? A. Voluntary?

Q. Involuntary; that you had to go.

A. Yes, I had to go, yes.

Q. And you didn't feel right about going into

(Testimony of Urho Paavo Patokoski.)

the Army, did you? A. What?

Q. You didn't like to go in the Army?

A. Well, I don't have any choice, because I like to live at home. I don't think everybody liked to go in the service.

Q. Many of the other boys who went with you, they didn't like Army service either, did they? [44]

A. They don't like it.

Q. They would rather stay at home?

A. That is right.

Q. They didn't want to go into the service, especially in war time; they didn't relish the uncertainties of Army life. Is that right?

A. That is right.

Q. Now, when you say that your service was involuntary you don't mean to say that your oath was involuntary, do you?

A. Well, that is a question what I have to—they don't even ask who will go. Everybody had to go. They said, "We will go to the church," and they don't explain any of that question there. I don't remember, anyway.

Q. When you went to school didn't you have the flag flying there, and didn't you swear allegiance to your country then, when you were a child going to school?

A. Well, no, they don't have that in Finland.

Q. They have songs to the flag? A. Yes.

Q. They sing patriotic songs? A. Yes.

Q. You were proud of that flag, weren't you?

A. Well, every flag in Finland—if there is an

(Testimony of Urho Paavo Patokoski.)

American flag or any other country flag, we stand up and we take our [45] hat off. If we sing American national hymn I stand up and I take my hat off. The same way for Finnish flag.

Q. Yes. So you at all times were happy, weren't you, that you were a Finn? You were happy that you were living under that flag, the Finnish flag?

A. Well, I don't just take any other country, myself, because I don't know any other country.

Q. You were happy, though, to be under that flag and live as a Finn?

A. Yes, and my people was, what I said before, partly we are happy.

Q. Now, during the war, World War II, Germany was your ally? A. We don't know that.

Q. Germany fought on your side, didn't they?

A. Yes.

Q. And they had troops stationed in your country?

A. Yes—no, we had to went to service, and when we was over there we heard about it, the German soldiers will help us.

Q. Did Germany have airplanes stationed in your country, up in the north, so that they could sink all of the shipping coming into Russia?

A. I think so, yes.

Q. How did you feel about that, ships going into Russia [46] and bringing all those supplies and those munitions into Russia, whom you were fighting? How did you feel about that?

A. Well, at that time we had nobody helping

(Testimony of Urho Paavo Patokoski.)

anywhere. We stayed alone. We didn't have any help except some credit from United States.

Q. That is the Winter War you are talking about. I am talking about World War II.

A. Yes. And after that time the Germans hadn't helped any more Russia. They helped Finland.

Q. Sure. And the Germans were over there with their submarines, were they not, sinking the ships coming into Russia?

A. I don't think so. Not in the Finnish sea, no. But airplanes, their airplanes was there.

Q. Were they located in the north end of Finland?

A. Yes, all over Finland; not even the north, but all over.

Q. What did you think about the Germans sinking all that shipping? Were you glad about it or unhappy?

A. I think so, that we are happy, because we asking help so many places and nobody had helped.

Q. You were glad the Germans came and helped you?

A. Yes. They helped a lot.

Q. What did you think about Great Britain sending ships up there and sending munitions to the Russians? What did you think about Great Britain?

A. At that time I think the Germans hadn't sent any, but [47] I know America sent help to Russia at that time.

Q. What did you think about that?

A. We feel very bad, because we have understanding over there that America is our best friend,

(Testimony of Urho Paavo Patokoski.)

and if some people can help they say that America will help. And I heard over there when I was on the line the President of the United States sent some order we have to stop; we don't get any more here, and we were stopped right away. And we believe so much in the United States——

Q. After the United States kept sending those munitions and sending other help to Russia were you not happy to see those ships sunk?

A. No, we feel awful sorry, because we understand that the United States is our friends, and we want so much to help her.

Q. But they were not helping you. They were helping Russia.

A. Well, we don't understand that. But we know that the United States sent help by Norway, by the railroad there, and they call for us and we have to stay there; we don't can cut this line. That make very bad feeling for us, because we have to stay on the line. And the Russians used American airplanes and American bullets for us, and we don't can cut the line. That is very funny case.

Q. I don't know what you mean. I don't quite understand you. You spoke of a line. What line?

A. Our defense's line over there in Finland; our defense line [48] over there in Finland.

Q. The line against whom? Russia or Norway?

A. The border, Finnish border.

Q. What border?

A. Between Russia and Finland. I know my family at that time was—many times they have to

(Testimony of Urho Paavo Patokoski.)

leave at midnight and after midnight and went to bomb shelter.

Q. Let's go back just briefly, Mr. Patokoski, to the hearing before the Immigration Service in 1948, September, 1948. Do you remember that you took an oath before you testified at that hearing?

A. Yes, I did.

Q. The same kind of an oath that you took here?

A. Yes.

Q. You testified there to tell the truth, didn't you?

A. Yes.

Q. You were asked this question:

“Q. During your residence in Finland did you vote in political elections? A. Yes.”

Was that your answer?

A. Yes.

Q. “Q. Up until when? A. 1946.”

A. Yes.

Q. “Q. In what kind of elections did you participate? A. The last election was for [49] the purpose of electing city officials. I have voted at elections for state officials.

“Q. When did you last vote for state officials?

A. I am not sure but I believe 1944 or 1945.”

So there you gave the impression to the hearing officer that you voted in other elections than the one that you spoke of here today?

A. Yes. That is at the same time, what I mean.

Q. Is it possible that you are wrong and that you might have voted in earlier elections?

(Testimony of Urho Paavo Patokoski.)

A. I really don't remember that.

Q. You don't remember?

A. No. That is only what I remember that one time, and that time I remember better because now we have nine more years. That is true.

Q. You were asked the question:

“Q. At the time of your entry into the United States on February 24, 1947, did you have any intention of remaining permanently in this country?”

“A. No.”

Do you remember that? A. Yes.

Q. “Q. How long did you intend to remain at that time? A. One year.” [50]

A. That is right, yes.

Q. What was the reason you came over to this country and you wanted to stay one year? What did you tell the hearing officer?

A. I liked studying that building construction and architecture.

Q. Did you want to study our architecture and our construction system?

A. I study every day.

Q. Why did you want to do that? Why did you want to make those studies?

A. Well, I said I studying all the time, all the year.

Q. Yes. Why?

A. Why? Because I like it to know more.

Q. Why did you come here to study?

A. Well, everybody like a better education.

Q. How were you going to apply that education?

(Testimony of Urho Paavo Patokoski.)

A. I don't understand the question.

Q. What were you going to do with your education? Were you going to try to build bigger dams for Finland or better construction methods?

A. Yes, that is my idea.

Q. That was your plan? A. Yes.

Q. Your plan was to come here and learn all you could [51] in that year and go back to Finland and do a better job? A. Yes.

Q. Now, you testified that you practically had to leave Finland overnight: that they were out looking for you and they were going to send you over to Russia. How do you reconcile that statement with your statement now that you were anxious to come and learn what you could so you could go back there?

A. What I said before, when I make application for this visa, temporary visa, at the same time I got to know the communists like to take me over to Russia or something, by a Soviet military officer, and that happen the same time, so many things.

Q. You must not have thought it was so dangerous, then, if you were coming over for some study and then you were going to go back?

A. Yes, that was my first idea.

Q. Now the draft, that was practically universal? They do that all over the world now, don't they? A. Yes, it is.

Q. And the boys have to go whether they like it or not?

A. Yes, everybody, every man has to go.

(Testimony of Urho Paavo Patokoski.)

Q. And it was the same in Finland?

A. Yes.

Q. Are you quite sure that you didn't take an oath the second and third time you went into the service? A. No.

Q. How about at the academy, when you were made an officer? A. They don't ask any more.

Q. You didn't have to pledge allegiance to your country? A. No.

Q. When you were in Finland and while you were in the Army you belonged to some voluntary organization, didn't you? A. Yes.

Q. Tell us about that.

A. That is almost the same as what is National Guard here, National Guard.

Q. That was a voluntary organization?

A. Yes.

Q. You didn't have to belong to that?

A. No, not necessarily.

Q. What was the purpose of that National Guard?

A. Because the communists—that is pretty hard to explain for me, but anyway, the other side is communists and the other side is just National Guard.

Q. It was to protect Finland, was it not? It was a National Guard to protect Finland?

A. Yes.

Q. Did you take an oath when you entered the National Guard?

A. They don't ask for an oath. [53]

Q. You have said that all the while until you

(Testimony of Urho Paavo Patokoski.)

came to this country and until you received the letter from the Immigration and Naturalization Service, up to that time you considered yourself always as being a Finnish citizen. That is right, isn't it? A. Yes.

Q. You said you were under duress. Do you know what that means? A. No.

Q. It means that at the time you went into the service you were forced to do something; you were compelled to do something that you didn't want to do; you were forced to do it.

A. Well, at that time I was about 20 years old. I don't think about it so much, what I had to do.

Q. The way you felt about it was about the same way all the other boys felt about it?

A. Yes.

Q. That went into the service the same time as you did? A. Yes.

Q. But you didn't object at that time or you didn't object to taking the oath, did you?

A. Well, only that one time when we went to the church——

Q. You didn't mind taking the oath, did you, of allegiance to your country?

A. I don't think so. [54]

Q. What? A. I don't understand quite.

Q. When you went into the Army you said there was a whole troop of you that took the oath?

A. Yes.

Q. You raised your hand? A. Yes.

Q. You didn't mind taking the oath, did you,

(Testimony of Urho Paavo Patokoski.)

that you would bear allegiance to your country?
You didn't mind that, did you? A. No, no.

Mr. Harr: I think that is all.

Redirect Examination

By Mr. Martin:

Q. Mr. Patokoski, you were asked whether you were quite sure you did not take an oath when you entered the service the second and third times, and you answered no. Don't you know whether you took an oath the second and third times when you went in the service? Did you take an oath the second time you went in the service? A. No.

Q. The third time you went in the service did you take an oath? A. No, only that one time.

Q. You are quite sure of that? You are sure you didn't [55] take any oath either of those last two times?

A. No, only that first time when I went.

Q. That is the only time you took an oath?

A. That is the only time what I had to do it.

Q. You are sure you didn't take an oath the second and third times?

A. No, they didn't ask about it.

Q. You mean yes, you are sure you didn't?

The Court: Oh, I know what he means.

Mr. Martin: I believe that is all.

Mr. Harr: I believe there was one other question I wanted to ask the witness. May I ask him now?

The Court: Yes.

(Testimony of Urho Paavo Patokoski.)

Recross-Examination

By Mr. Harr:

Q. Mr. Patokoski, here is a document I would like to show you. Would you tell us what that is. What is it?

A. This is my birth certificate, I believe. I think so.

The Court: Can you stipulate what it is?

Mr. Martin: I will stipulate that this document, which can speak for itself, is a certificate of nationality which states that he was born on July 19, 1907, at Finland, and so far as known is a citizen of the Republic of Finland. It is for the purpose of securing a passport or visa to come to this country, and on the back is a certificate of his [56] date of birth.

Mr. Harr: Is this not for the purpose of getting a visa to go back to Finland, dated January 22, 1956?

The Court: You can argue it later. Put it in evidence.

Q. (By Mr. Harr): Did you make an application to go back to Finland in 1956? A. No.

The Court: How about your dates? You mean this year?

Mr. Harr: Yes, January 22, 1956.

Mr. Martin: I believe that is something that the Immigration and Naturalization Service required. I don't think that Mr. Patokoski applied for a visa to go back to Finland.

The Court: He says he didn't.

(Witness excused.)

Mr. Harr: Your Honor, I would like to introduce two exhibits, if I may have them marked, please.

The Court: Let's put the exhibits in later. I will find time to do that. [57]

FRANZ W. KOSKINEN

was produced as a witness in behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Martin:

Q. Reverend Koskinen, what is your full name?

A. Franz William Koskinen.

Q. Where do you live?

A. 2133 North Skidmore Court, Portland.

Q. What is your occupation or profession?

A. Pastor of the Messiah Lutheran Church of Portland.

Q. Do you know Mr. Patokoski?

A. Yes, I do.

Q. How long have you known him?

A. I have known him for several years, but more intimately the last two and a half years, when I have been pastor of this church to which he belongs.

Q. Is he a member of your church?

A. Yes, he is.

(Testimony of Franz W. Koskinen.)

Q. In connection with this hearing that is being held here today did you translate some papers or documents?

A. Yes, together with my wife, Ida M. Koskinen, we translated several items.

Q. Was one of those a draft law of the Republic of Finland? A. Yes. [58]

Q. Do you recall offhand what the draft law specified as to the punishment of individuals who did not comply with it?

A. Offhand I can't recall.

Q. If I were to hand you these exhibits would you be able to refresh your recollection from them?

A. I believe so.

Q. Do you recall now from your examination of those documents what the punishment was for evading service?

A. If you will give me time to check over.

Mr. Harr: Your Honor, I think the laws would speak for themselves. If the pastor has a translation of it, that likewise would speak for itself.

Mr. Martin: We have a translation there, if counsel wants to see a copy of it.

The Court: We don't need it now. What does the law say?

The Witness: I can read it here for you if you wish. This is Section 40:

“A draftee, without legal reason, not appearing for military service or has not, as prescribed in Section 24, sent his agent in his place, or who has not through the consular service sent proof of his

(Testimony of Franz W. Koskinen.)

acceptability or inacceptability for military service, shall be punished by not [59] less than five nor more than one hundred day fines or not more than one year of imprisonment. The same law shall apply to one who leaves the draft center before he has received the certificate prescribed by Section 26, or who does not appear at a specified time for special examination."

Q. (By Mr. Martin): What about a person who leaves the country illegally or does not submit himself to service? I am referring to Section 39.

A. Section 39:

"Any man, seventeen years of age or before he has fulfilled his obligations in the regular army or who has not been released from military service, who leaves the country illegally, shall be punished by not less than fifty nor more than two hundred day fines or imprisonment of not less than three months or more than one year; and shall be drafted into regular service if he is qualified and has not yet reached the age of thirty-two years."

The Court: Day fines?

The Witness: Day fines.

The Court: What does that mean?

The Witness: That is the best translation we could [60] give to that. It is a literal translation.

The Court: You don't know what it means?

The Witness: Day fines, yes, I would—well, the best interpretation that I can put upon that would be that it is a day in prison. He is fined so many

(Testimony of Franz W. Koskinen.)

days. But we made a literal translation of that here.

Q. (By Mr. Martin): Referring to Article I, Section 1, would you read what the requirement is for service as to any man in Finland.

A. "For the defense of the fatherland and lawful order of society, every man in Finland is responsible for military service."

Q. Now, Reverend Koskinen, did you also make a translation of a document purporting to be a change in the name of the Patokoski family from Niemela to Patokoski?

The Court: The Government is not contending anything about that, is it?

Mr. Martin: I don't know. We want to have the record show that the name was changed so that there will be something in the record to show that the father, Matti Niemela, is actually the father of this man.

The Witness: We translated the clergy's certificate from the Cathedral Parish of Oulu, Diocese of Oulu, for the purpose of seeking citizenship, and here it mentions the two names, "Patokoski, formerly Niemela," and then in the second [61] paragraph it says: "The family name 'Niemela' was changed by the decision of the Governor of the Province of Oulu on 2/9/1939 to 'Patokoski.'"

This is an official document signed by E. Jokela, Assistant Pastor of that office.

Mr. Martin: All right. Thank you very much, Reverend.

Mr. Harr: No questions.

(Witness excused.)

The Court: There is no pretrial order, I believe, in this case, so you gentlemen, after I leave, give Mrs. Mundorff your exhibits and tell Mr. Beckwith what you want to do about their being admitted. I will tell you now they will all be admitted subject to whatever objections may be stated by you.

Now, if you have any law you want me to consider, give it to me in written form, and after you do that then I will hear you in argument.

Will you want to submit some authorities?

Mr. Martin: I would like to do that.

The Court: How much time would you like?

Mr. Martin: Could I have thirty days?

The Court: Yes. Give Mr. Harr thirty days, and then I will hear you in oral argument after that.

(Certified copy of Application for Non-immigrant Visa, dated February 4, [62] 1947, was marked and received in evidence as Defendant's Exhibit 2.)

(Certified copy of Certificate of Nationality, dated July 22, 1955, was received in evidence as Defendant's Exhibit 3.)

(Clergy Certificate as to Change of Name was marked and received in evidence as Defendant's Exhibit 4.)

(The Draft Law of Finland, together with a translation of portions thereof, was marked and received in evidence as Plaintiff's Exhibit 5.)

(The record file of the United States Immigration and Naturalization Service relating to plaintiff was marked and received in evidence as Defendant's Exhibit 6.)

(Whereupon, proceedings in the above-entitled cause on said day were concluded.) [63]

REPORTER'S CERTIFICATE

I, John S. Beckwith, an Official Reporter of the above-entitled court, hereby certify that on October 29, 1956, I reported in shorthand the testimony and proceedings had upon the trial of the above-entitled cause before Honorable Claude McColloch, Chief Judge; that thereafter I prepared a typewritten transcript from my shorthand notes, so taken, and the foregoing transcript, Pages 1 to 63, both inclusive, constitutes a full, true, and accurate transcript of said testimony and proceedings so taken by me on said date as aforesaid, and of the whole thereof.

Dated at Portland, Oregon, this 28th day of February, 1957.

/s/ JOHN S. BECKWITH,
Official Reporter.

[Endorsed]: Filed September 20, 1957. [64]

[Title of District Court and Cause.]

DOCKET ENTRIES

1955

July 22—Filed complaint.

July 22—Issued summons—to marshal.

July 22—Filed plaintiff's motion for temporary restraining order, etc.

July 22—Entered order withdrawing ptff's application for restraining order pendente lite.

July 25—Filed summons with marshal's return.

Sept. 19—Entered order setting for trial on Nov. 1, 1955.

Sept. 16—Filed answer.

Sept. 27—Entered order striking trial date of Nov. 1, 1955.

Nov. 25—Entered order setting for pretrial on Jan. 3, 1956.

1956

Feb. 1—Filed ptff's motion for leave to file supplemental complaint attached.

Feb. 1—Filed reply.

Feb. 1—Filed & entered order granting leave to file supplemental complaint & giving def. until July 9, 1956, to answer.

July 6—Filed answer to supplemental complaint.

July 9—Filed interrogatories to ptff.

July 18—Filed answer to interrogatories.

Aug. 16—Entered order setting for trial Oct. 2nd.

Sept. 17—Entered order resetting for trial Oct. 30, 1956.

Oct. 26—Filed amended answer.

- Oct. 29—Record of hearing on trial, evidence ad-
duced, ptff. given 30 days to submit brief
& deft. given 30 days to answer.
- Dec. 13—Filed plaintiff's brief.
- 1957
- Jan. 18—Filed answering brief of defendant.
- Jan. 24—Entered order setting case for argument
on Monday, Feb. 4th.
- Feb. 4—Record of hearing re citizenship. Deft.
given to Mar. 4th to file brief & transcript
of testimony.
- Mar. 14—Filed memo of decision—Plaintiff to sub-
mit findings.
- Apr. 1—Filed & entered Finding of Fact & Conclu-
sion of Law & Judgment.
- May 29—Filed notice of appeal by defendant.
- July 3—Filed motion to extend time.
- July 3—Filed & entered order extending time 90
days to docket appeal.
- Sept. 18—Filed designation of record.
- Sept. 20—Filed transcript of testimony.

In the United States District Court
for the District of Oregon

United States of America,
District of Oregon—ss.

CERTIFICATE OF CLERK

I, R. DeMott, Clerk of the United States District
Court for the District of Oregon, do hereby certify
that the foregoing documents consisting of Com-

plaint; Answer; Reply; Motion for leave to file supplemental complaint; Order granting leave to file supplemental complaint; Answer to supplemental complaint; Interrogatories to be propounded to plaintiff; Answer to interrogatories; Amended answer; Memorandum of decision; Findings of fact, conclusions of law and judgment; Notice of appeal; Motion for extension of time for filing record on appeal; Order extending time ninety days from date of filing Notice of Appeal; Designation of contents of record on appeal and Transcript of docket entries constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 8189, in which Herbert Brownell, Jr., as Attorney General of the United States of America is the defendant and appellant and Urho Paavo Patakoski is the plaintiff and appellee; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith the reporter's transcript of testimony, together with Exhibits numbered from 1 to 6, inclusive.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 20th day of September, 1957.

[Seal]

R. DEMOTT,
Clerk;

By THORA LUND,
Deputy.

[Endorsed]: No. 15719. United States Court of Appeals for the Ninth Circuit. William P. Rogers, as Attorney General of the United States of America, Appellant, vs. Urho Paavo Patokoski, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed: September 23, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15719

HERBERT BROWNELL, JR., as Attorney Gen-
eral of the United States of America,

Appellant,

vs.

URHO PAAVO PATOKOSKI,

Appellee.

STATEMENT OF POINTS UPON WHICH AP-
PELLANT INTENDS TO RELY ON AP-
PEAL

Appellant respectfully submits the following Statement of Points upon which appellant intends to rely on appeal:

1. The Court erred in determining that the plaintiff is a citizen and national of the United States of America.

2. The Court erred in finding that the plaintiff did not know, until he was so informed by the Immigration and Naturalization Service, that he was a citizen of the United States of America at the time of his birth.

3. The Court erred in concluding that the plaintiff could not expatriate himself or lose or abandon his United States of America citizenship by expatriative acts because he did not know he was a

citizen of the United States of America when such acts were committed.

4. It was error for the Court to adjudge that the plaintiff had not expatriated himself as a citizen of the United States by serving in the Finnish military forces.

5. The Court erred in holding that conscription renders military service involuntary.

6. It was error for the Court to adjudge that the plaintiff had not expatriated himself as a citizen of the United States by voting in a Finnish political election.

7. The Court erred in finding duress to compel plaintiff's voting in Finnish political elections.

Dated at Portland, Oregon, this day of September, 1957.

C. E. LUCKEY,
United States Attorney,
for the District of Oregon;

/s/ VICTOR E. HARR,
Assistant United States Attorney, Attorneys for
Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed September 27, 1957.

[Title of Court of Appeals and Cause.]

No. 15719

STIPULATION RELATING TO THE DESIGNATION OF THE RECORD TO BE PRINTED

It Is Hereby Stipulated that the entire record, including the transcript of testimony, as transmitted to this Court by the Clerk of the Court below, and including appellant's Statement of Points upon which Appellant intends to rely on Appeal, the Order of this Court staying proceedings, and the Order Substitution Party-Appellant, be printed herein.

It Is Further Stipulated, subject to the approval of the United States Court of Appeals for the Ninth Circuit, that the original exhibits heretofore filed with the Court, need not be printed in the record, but may be referred to by the parties hereto in their briefs and oral arguments and that they be considered by the Court as though they were incorporated in the printed record.

Dated this 18th day of September, 1958.

/s/ VICTOR E. HARR,

Assistant United States Attorney, of Attorneys for Appellant;

/s/ WILLIAM A. MARTIN,

Attorney for Appellee.

[Endorsed]: Filed September 23, 1958.